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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos. 29-00271, et al. (see attached)
	)	
	)	
Case No. 39576	)	POCATELLO'S MEMORANDUM IN SUPPORT OF
	)	MOTION TO STAY ITS STATE LAW-BASED
		CLAIMS

Pocatello seeks to stay the proceedings in its state law-based claims in the 38 subcases herein. These are "dual-based" claims, which the SRBA court defines as claims to the same water under separate legal theories. *See* Special Master's Amended Recommendation Re: Basin-Wide Issue 12, June 14, 1996 at 3 (hereinafter "Issue 12 Order") (*affirmed in its entirety* by Judge Hurlbutt's Order, April 25, 1997).¹ Here, Pocatello's federal law-based claim seeks entitlement under federal law for the water represented by its 38 state law-based claims. However, the federal law-based claim is also broader² because it claims sources consistent with the Act of September 1, 1888, and also complies with I.C. § 42-1409(1)(c)(ii).

¹ Judge Hurlbutt's Order at page 5 reads: "F. A Single Water Rights Cannot Be Decreed With Both a State and Federal Basis. This recommendation is adopted in its entirety."

² In its federal law-based claim, Pocatello has claimed water rights consistent with the Act of September 1, 1888 (*see* ¶4 and Remark #15 of Pocatello's federal claim.), *e.g.*, from "the waters of any river, creek, stream, or spring flowing through the Fort Hall Reservation in the vicinity of said town [of Pocatello]... as may be necessary to provide said town with proper water and sewerage facilities." These sources include, without limitation, the Blackfoot River, Portneuf River, Snake River, Bannock Creek, Jeff Cabin Creek, Mink Creek, Lincoln Creek, Rattlesnake Creek, Ross Fork Creek, Sand Creek, and Toponce Creek.

Although the federal law claim is broader than the state-based claims, where the federal claim and state claims overlap, they differ only by priority date. These are “dual-based” claims. Special Master Haemmerle framed the inquiry before the court when faced with a “dual-based” claim as follows:

(1) whether an implied or express reserved right exists when the same water source already has been appropriated under state grounds or (2) whether a state-based claim exists where the same water has been reserved.... In summary, for both express and implied reservations, the court concludes that a state-based claim for any purpose of use would preclude a federal reservation for the same water where the state-based claim has an earlier priority date. On the other hand, if a federal reservation predates a state-based claim, then the earlier federal reservation precludes the state-based claim....

The court goes on:

If the state-based half of a “dual-based” claim is objected to and has an earlier priority date, then the court should determine the state-based claim first. If the Court finds that a state-based right exists, then the federal reserved claim should be dismissed as a matter of law. On the other hand, if the federal reserved claim has an earlier priority date, then the federal reserved claim should be determined first. If the court finds that a federal reserved right exists, then the subsequent state-based claim should be dismissed as a matter of law.

Pursuant to SRBA court procedures, then, Pocatello’s state-based claims should be stayed until its federal law-based claim can be determined by the court. Pocatello intends to rely on its federal law-based right to the extent it is decreed; staying its state-based claims which it will be required to dismiss following the determination of its federal law-based claims promotes judicial economy and preserves the resources of the litigants.

For the reasons stated above, Pocatello respectfully requests that proceedings on state law-based claims be stayed until determination of its federal law-based claim. Such stay should be in force until 60 days following final determination of its federal law-based claim, including the expiration of the parties’ rights to appeal, when Pocatello must either file a motion to dismiss its state-based claims or set a status conference for the state-based claims.

DATED this 23rd day of December 2004.

BEEMAN & ASSOCIATES, P.C.
Attorneys for the City of Pocatello

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of December 2004, I caused a true copy of the foregoing **POCATELLO'S MEMORANDUM IN SUPPORT OF MOTION TO STAY ITS STATE LAW-BASED CLAIMS** to be served on the following by U.S. First Class Mail unless indicated as faxed or hand delivered:

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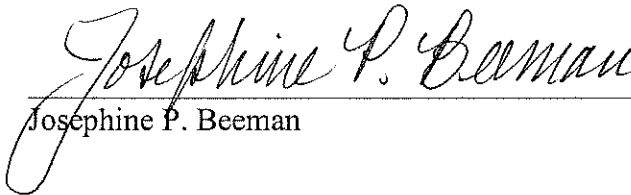
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EXHIBIT A

Subcase Numbers

29-00271
29-00272
29-00273
29-02274
29-02338
29-02354
29-02382
29-02401
29-02499
29-04221
29-04222
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